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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 640

HENRY L. DEBUSK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Claims (Pet., Ex. A, pp. 9-17) is not yet reported.

JURISDICTION

The judgment of the Court of Claims was entered on July 12, 1955 (Tr. 38). A motion for rehearing, timely filed on July 20, 1955, was denied on November 8, 1955 (Tr. 39). The petition for a writ of certiorari was filed on January 26, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1255(1).

QUESTIONS PRESENTED

1. Whether petitioner's removal from federal employment was effected in compliance with the procedural requirements of Section 14 of the Veterans' Preference Act of 1944.

2. Whether petitioner's removal from federal

employment was "for such cause as will promote the efficiency of the service."

STATUTE INVOLVED

Section 14 of the Veterans' Preference Act of 1944, 58 Stat. 390, as amended, 5 U. S. C. 863, provides as follows:

> No permanent or indefinite preference eligible, who has completed a probationary or trial period employed in the civil service, or in any establishment, agency, bureau, administration, project, or department, hereinbefore referred to shall be discharged, suspended for more than thirty days, furloughed without pay, reduced in rank or compensation, or debarred for future appointment except for such cause as will promote the efficiency of the service and for reasons given in writing, and the person whose discharge, suspension for more than thirty days, furlough without pay, or reduction in rank or compensation is sought shall have at least thirty days' advance written notice (except where there is reasonable cause to believe the employee to be guilty of a crime for which a sentence of imprisonment can be imposed), stating any and all reasons, specifically and in detail, for any such proposed action; such preference eligible shall be allowed a reasonable time for answering the same personally and in writing, and for furnishing affidavits in support of such answer, and shall have the right to appeal to the Civil Service Commission from an adverse decision of the administrative officer so acting, such

appeal to be made in writing within a reasonable length of time after the date of receipt of notice of such adverse decision: *Provided,* That such preference eligible shall have the right to make a personal appearance, or an appearance through a designated representative, in accordance with such reasonable rules and regulations as may be issued by the Civil Service Commission; after investigation and consideration of the evidence submitted, the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and shall send copies of the same to the appellant or to his designated representative, and it shall be mandatory for such administrative officer to take such corrective action as the Commission finally recommends: *Provided further,* That the Civil Service Commission may declare any such preference eligible who may have been dismissed or furloughed without pay to be eligible for the provisions of section 15 hereof.

STATEMENT

Petitioner was formerly employed as a loan guaranty examiner in the Regional Office of the Veterans Administration located at Lubbock, Texas. By letter dated December 22, 1952, he was formally advised of his proposed removal from employment for cause in accordance with Veterans Administration regulations and Section 14 of the Veterans' Preference Act (Tr. 5-11). The letter set out in detail thirteen instances wherein petitioner allegedly had shown an improper attitude toward

his supervisors, refused to accept instructions from his supervisors, shown disrespect toward his supervisors, or made statements constituting threats to his supervisors (Tr. 5-10). The letter further advised petitioner that he had until January 5, 1953 to submit, in writing, a reply to the charges and that he might submit affidavits in support of his reply (Tr. 10); that he could make written request for a hearing before an Employee Hearing Committee at which he might present evidence and witnesses willing to testify (Tr. 10-11); that, if it was the decision of the Manager of the Regional Office that he be removed, his removal would be effective not less than thirty days from the day after the date of receipt of the letter of December 22 (Tr. 11).

Petitioner submitted a written reply to the charges and requested a hearing (Tr. 11-17). A three-man hearing committee was then impaneled, consisting of one member designated by the petitioner, one member selected by the Veterans Administration, and the third, to act as chairman, selected by the other two members. A hearing was held at which petitioner was present and represented by counsel. By letter dated January 30, 1953 petitioner was advised by the Regional Manager of the Veterans Administration that, after consideration of the record made before the Employees Hearing Committee, the charges were found to have been sustained and that his removal

would become effective as of the close of business February 2, 1953 (Tr. 1).

The letter of January 30 informed petitioner of his right to appeal to the Regional Director of the Civil Service Commission or to the Administrator of Veterans Affairs (Tr. 33). By letter dated February 3, 1953 petitioner directed an appeal to the Regional Director of the Civil Service Commission (Tr. 33). A hearing was thereupon held before an Appeals Examiner on February 25, 1953 (Tr. 33). Petitioner, represented by counsel, produced witnesses in his behalf and was afforded an opportunity of cross-examination. The Appeals Examiner, after hearing, recommended that the removal action by the Veterans Administration be sustained, and on March 27, 1953 the Regional Director affirmed. The Regional Director's decision contained an analysis of the evidence and stated that (Tr. 33):

> * * * we are of the opinion that the statements admittedly made by appellant, as set forth by the agency's letter of charges, clearly disclosed that Mr. DeBusk is not amenable to supervision. The statements made by [petitioner] in responding to official communications, and in one instance with reference to an official conference, do, in our opinion, constitute the offenses as alleged by the agency * * *.

Thereafter, petitioner appealed from the Regional Director's decision to the Board of Appeals and Review of the Civil Service Commission and

submitted a brief in support of his position (Tr. 33-34). By letter dated June 14, 1954 petitioner was informed by the chairman of the Board of Appeals and Review that (Tr. 33-34):

> The Commissioners, after careful consideration of all the evidence developed in connection with the case, have determined that the four specific charges, which were based on your office demeanor, were of sufficient gravity to fully warrant removal despite an overall performance rating of "Satisfactory." The charges were supported by evidence of your disparaging statements and defiant attitude toward your supervisors. In view of the foregoing the decision of the Regional Office is affirmed.

On September 1, 1954 petitioner filed his petition in the Court of Claims (Tr. 1-4) praying that his removal be set aside and that he have judgment for his salary from February 2, 1953, the effective date of his removal (Tr. 4). On petitioner's motion for judgment on the pleadings (Tr. 23-27) and the Government's cross motion for summary judgment (Tr. 28-31), the Court of Claims sustained the Government's motion and dismissed the petition (Tr. 38).[1]

ARGUMENT

The legal contentions advanced by petitioner

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[1] For previous litigation based upon petitioner's removal from federal employment, see *DeBusk* v. *Harvin*, 212 F. 2d 143 (C. A. 5).

in support of his claimed right to reinstatement to federal employment and to back salary were carefully considered by the Court of Claims and found to be without merit. The decision below is clearly correct and the petition presents no question which calls for further review by this Court.

1. From the extensive administrative record which was before the Court of Claims it is plain that there was full compliance with the procedural requisites of Section 14 of the Veterans' Preference Act, as amended, 5 U.S.C. 863 (*supra,* pp. 2-3). Petitioner's only intimation to the contrary (Pet. 5) is based upon the failure of the letter of December 22, 1952 and the statement of charges therein to state, in terms, that petitioner's proposed removal was for such cause "as will promote the efficiency of the service".

With respect to preference eligibles, Section 14 of the Act requires that the reasons for the contemplated personnel action be given in writing and that they be set forth specifically and in detail. This was done (*supra,* pp. 3-4). There is certainly no requirement in Section 14, either express or implied, that conduct specifically described and appearing improper on the face of the allegations be characterized by the redundant declaration that it is inconsistent with "the efficiency of the service." Petitioner was fully notified, moreover,

that the proceeding was for cause and pursuant to Section 14 of the Act.[2]

2. Petitioner also suggests that the charges were insufficient, as a matter of substance, to satisfy the terms of Section 14, which precludes administrative action adverse to a preference eligible employee "except for such cause as will promote the efficiency of the service." It appears well settled, to begin with, that an administrative determination as to what constitutes cause for an employee's discharge will not ordinarily be reviewed by the courts. *Eberlein* v. *United States,* 257 U.S. 82; *Keim* v. *United States,* 177 U.S. 290; *Kohlberg* v. *Gray,* 207 F.2d 35 (C.A.D.C.), certiorari denied, 346 U.S. 937; *Williams* v. *Cravens,* 210 F.2d 874 (C.A.D.C.), certiorari denied, 348 U.S. 819; *Carter* v. *Forrestal,* 175 F.2d 364 (C.A.D.C.),

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[2] Neither is there merit to petitioner's apparent contention that the administrative action removing him from federal employment was vitiated by the failure of the letter of December 22, 1952, to conform to Section 22.09d(4)c of Chapter 20 of the Veterans Administration Manual for Personnel Administration (Pet. 14-15). The manual and the provision to which petitioner refers are intended as a guide for the internal management of the Veterans Administration and confer no procedural or substantive rights upon an employee in addition to those provided by Section 14 of the Veterans Preference Act. In any event, as noted by the Court of Claims (Pet. 15-16), the omission of the personnel officer's counter-signature from the letter of December 22, 1952, which forms the basis of petitioner's complaint, was no more than a technical violation of the manual which was cured by the fact that the charges filed against petitioner were prepared with the advice and assistance of the personnel officer. See *DeBusk* v. *Harvin,* 212 F. 2d 143 (C. A. 5).

certiorari denied, 338 U.S. 832. In any event, the Court of Claims, in the instant case, has examined the charges and reviewed the evidence. It concluded that there was no showing that the administrative action taken was "*arbitrary, capricious,* or not supported by substantial evidence" (Pet. 17). Cf. *Gadsden* v. *United States,* 111 C. Cls. 487.

Certainly, there can be no serious question that insubordination and lack of amenability to supervision may constitute cause for removal under a statutory standard cast in terms of "promot[ing] the efficiency of the service." It is equally plain that there is no occasion whatever for a further review by this Court of the underlying evidence.[3]

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[3] The Court of Claims held that petitioner's satisfactory performance rating did not preclude his removal for cause. While it is not entirely clear from the petition whether petitioner now takes issue with this determination, there can be no doubt as to its correctness where, as here, petitioner's removal was based upon specific instances of improprieties occurring in the course of his employment. Cf. *Ward* v. *Thomas,* 225 F. 2d 953 (C. A. D. C.), certiorari denied, January 30, 1956, No. 574, October Term, 1955.

CONCLUSION

The decision below is clearly correct and there is no conflict. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY 1956.